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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,713	03/10/2004	Rolf U. Halden	JHUHLD1	4304

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EXAMINER

BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1797

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/797,713

Applicant(s)

HALDEN, ROLF U.

Examiner

William H. Beisner

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006 and 03 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 17-44 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/04 and 8/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Art Unit: 1797

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group VI, Claims 17-44, in the reply filed on 11/15/2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

With respect to Applicant's comments that amended claim 1 should be examined with elected claims 17-44, claim 1 stands withdrawn as a non-elected claim because the device as claimed can be use to perform a different method such as for merely sampling a fluid.

2. Claim 1 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/15/2006.

Information Disclosure Statement

3. The information disclosure statements filed 3/10/2004 and 8/22/2005 have been considered and made of record.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 1797

5. Claims 29-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 29-32, recitation of “in the form of a rapidly, exchangeable microtiter plate” is indefinite. It is suggested that the structure of the plate be recited so as to clearly define the metes and bounds of the claim.

In claims 33-36, “the content” lacks antecedent basis. Note claims 29-33 are silent with respect to the content of the microtiter plate.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 17-28 and 37-44 are rejected under 35 U.S.C. 102(b) as being anticipated by Halliburton (US 2,609,878).

With respect to claim 17, the reference of Halliburton discloses a testing device (See Figures 1-3) that is structurally the same as that instantly claimed. The device includes means (16) providing a plurality of physically separated test microcosms (29, 41, 42, 43) that are so configured as to allow for fluid flow through the microcosms; means (12, 14, 15, 16) for containing and protecting the microcosms as they are placed in the environment and for

Art Unit: 1797

providing the flow of fluid(12 or 44) from the surrounding environment to enter and flow through the microcosms; and means (25 and 30) for covering the fluid flow paths through the microcosms so as to regulate the flow through the microcosms.

With respect to claim 18, in the absence of further positively recited structure, the microcosms of the reference of Halliburton are considered to be configured to allow for automated analysis using commercially available robotics.

With respect to claims 19 and 20, the device of Halliburton includes a means (12 or 44) for causing fluid flow from the surrounding environment and through the microcosms; means (21, 23, 24) for collecting and retaining the fluid flowing through the microcosms; and means (25) downstream from the microcosms for preventing backflow of the fluid into the microcosms.

With respect to claims 21-24, the side walls of tube elements (29, 41, 42, 43) or balls of valves (25 or 30) are capable of collecting or having microorganisms attach thereto.

With respect to claims 25-28, the side walls of tube elements (29, 41, 42, 43) or balls of valves (25 or 30) are capable of supporting or containing a dried test substance.

With respect to claims 37-40, in the absence of further positively recited structure, the microcosms of the reference of Halliburton are considered to structurally meet the claim limitation of being capable of “aiding the effectiveness of said varying bioremediation strategies for said environment, wherein said microcosms are configured to be representative of said varying bioremediation strategies”.

With respect to claims 41-44, the valve in device (12) or pump (44) are capable of being remotely controlled from the surface and cause or control the flow of fluid through the microcosms.

Art Unit: 1797

Allowable Subject Matter

8. Claims 29-36 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:

Claims 29-36 would be allowable if amended to clearly define the structure of “a rapidly, exchangeable microtiter plate” because the prior art of record fails to teach or fairly suggest replacing the fluid flow paths (29, 41, 42, 43) of the reference of Halliburton (US 2,609,878) with “a rapidly, exchangeable microtiter plate”.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Beisner/
Primary Examiner
Art Unit 1797

WHB